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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/622,249	08/15/2000	Peter Alan Smith	CU-2328 TFP	9730

7590 06/07/2004

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EXAMINER	
EDELL, JOSEPH F	
ART UNIT	**PAPER NUMBER**
3636	

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/622,249	SMITH, PETER ALAN	
	Examiner	Art Unit	
	Joseph F Edell	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *44-67* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *44-67* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12 March 2004 has been entered.

Claim Objections

2. Claim 54 is objected to because of the following informalities: "it" (line 3) should read "the bladder". Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 44-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,330,598 to Whiteside in view of U.S. Patent No. 5,868,461 to Brotherston.

Whiteside discloses a nursing chair that is basically the same as that recited in claims 44-65 except that the chair lacks an underlay, a seat back pivot, wheels, and an a metal frame support structure with plastic sheet material, as recited in the claims. See Figures 1-5 of Whiteside for the teaching that a chair has a seat support structure 12 (Fig. 1), a backrest support structure 14 (Fig. 1), at least one air-containing cushion 18,20 (Fig. 1) positioned on the seat support structure, at least one air-containing cushion 22,24 (Fig. 1) secured to the backrest support structure, a layer of compressible foam material (see column 2, lines 1-8) that overlays the cushions, an upholstery material 16 (Fig. 1) covering the layers layer of compressible material wherein each cushion includes a bladder formed from a pliable, gas impermeable material and charged with a predetermined amount of air that is at the surrounding atmospheric pressure and displaces 15 % - 60 % of a maximum contained volume (see Fig. 2) of each bladder, an upper backrest cushion overlaps a lower backrest cushion (see Fig. 1), the lower backrest cushion overlaps the cushion of the seat, the upper backrest cushion extends over the upper edge of the backrest portion, and the bladder would assume an oblong shape if charged with air equal to a maximum contained volume, and air valves 18c,20c,22c,24c (Fig. 8) through which air is admitted. Brotherston shows a chair similar to that of Whiteside wherein the chair has a pivotable backrest 12 (Fig. 1), a seat portion 14 (Fig. 1), a pivotable seat support structure 81 (Fig. 2), and a leg support 75 (Fig. 1) made of metal frame members 16,18 (Fig. 1), plastic sheet material (see Fig. 1), and wheels 62 (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the chair of

Whiteside such that the chair has a foam sheet underlay positioned below the cushions and having a higher density than that of the overlay, a backrest support structure pivotably mounted to the seat support structure, wheels, a pivotable seat support structure, and a pivotable leg support portion with cushion and overlaying materials wherein the backrest and seat support structure are metal frames with plastic sheet material that support the cushions, such as the chair disclosed in Brotherston. One would have been motivated to make such a modification in view of the suggestion in Brotherston that the chair with the metallic, pivotable leg, seat, and backrest support structures allows for a reclining support of a user for long periods of time.

5. Claims 66 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whiteside in view of Brotherston as applied to claims 22-41 above, and further in view of U.S. Patent No. 5,687,438 to Biggie et al.

Whiteside, as modified, discloses a chair that is basically the same as that recited in claims 66 and 67 except that the type of fastening material for the cushions and upholstery is not specified, as recited in the claims. Biggie et al. show a chair similar to that of Whitside wherein the chair has seat portion (Fig. 1), a backrest portion (Fig. 1), at least one air-containing cushion 12 (Fig. 1) positioned on the seat, at least one air-containing cushion positioned on the backrest 12 (Fig. 1), and upholstery material 18 (Fig. 1) covering the cushions wherein the cushions and upholstery material are secured in place by the use of self-securing fastening materials 31,32 (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the chair of Whiteside such that the cushions

and upholstery material have self-securing fastening materials, such as the chair disclosed in Biggie et al. One would have been motivated to make such a modification in view of the suggestion in Biggie et al. that the cushions and upholstery materials with self-securing fastening materials allow for cushions and upholstery that may be easily removed for cleaning.

Response to Arguments

6. Applicant's arguments filed 12 March 2004 have been fully considered but they are not persuasive. Applicant argues that there would be no motivation to modify the teachings of Whiteside in view of Brotherston such that the cushions are suspended from a frame because the disclosed chairs share no similarities. Although the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, motivation does exist in the teachings of Brotherston that a chair having a frame with seat and back portions extending therebetween, a pivotally mounted backrest, a pivotally mounted leg support portion, and wheels allows for a chair that is mobile and provides superior comfort to the user in a plurality of positions and for extended periods of time. See column 1, lines 16-42 of Whiteside for the teaching that the chair with the air-containing cushions provides adjustable support to seat individuals that require varying degrees of support and are of different heights. See column 1, lines 12-67 and column 2, lines 1-5

of Brotherston for the teaching that the chair with the tiltable frame and wheels provides adjustable support to elderly people that need to rest for significant periods of time. Both reference teaching one skilled in the art techniques to improves the adjustability of chair sections to provide improved to support to users seated for long periods of time.

7. Next, Applicant argues that the air-containing cushions disclosed in Whiteside have a pressure greater than atmospheric pressure. Examiner maintains that the pressure of air contained within any closed bladder of pliable, gas impermeable material will inherently be at atmospheric pressure. The pressure will only significantly rise above atmospheric pressure when air is introduced to increase the pressure causing plastic deformation, i.e. inflation, of the bladder. While Whiteside does teach the inflation of the air-containing cushions above atmospheric pressure in order to raise the height of the seat cushion to accommodate users of lesser heights (see Figure 5), the air-containing cushions are also adjustable to atmospheric pressure wherein the maximum contained volume is well below 60 % (see Figures 2-4). Moreover, Applicant argues that the air is pneumatically introduced to the air-containing bladders through valves (see Figure 6), which implies that the air is pressurized. However, air may only be introduced into a closed bladder through the introduction of pressurized air. Once air is introduced and the bladder is again closed, the pressure within the bladder will reach equilibrium.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

Peter M. Cuomo
SPE
Art 3636,

JE
June 1, 2004